

**REMARKS**

Claims 1-8 remain in this application. Applicants respectfully request that this amendment be entered on the grounds that it places the Application in condition for allowance or in the alternative, simplifies the issues on appeal.

In the "Response to Arguments" section, the office action addresses applicants' assertion that the first office action brought together nine references to make the rejection, implying that such was not the case. The rejection in the first office action is stated as follows:

"Claims 1-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over any of *Zur, Wu, Shaw, and Bartlett et al* in view of *Larson* and further in view of any of *Lidow, Forbes, and Blair* when further considering *Higgins et al.*"

Applicants count nine references.

The office action asserts "the instant rejection utilizes only four references to propose the combination." The rejection as set forth in the second office action is as follows:

"Claims 1-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over any of *Zur, Wu* and *Bartlett et al* in view of *Larson* and further in view of any of *Lidow, Forbes, and Blair* when further considering *Higgins et al.*"

Applicants count eight references.

Applicants only raise this point to clarify for the examiner the meaning of applicants' entire statement, a part of which the office action quoted. The point applicants were making was that in spite of the citing of nine references in the rejection of Claims 1-8, the office action conceded that that none of these references, not even the *Higgins* reference, recited automatic posture positioning change during sleep.

The current, final office action again recognizes "*Higgins et al* does not specifically recite automatic posture positioning change during sleep. . ." and then extrapolates a desire for accomplishing an automatic positioning change from the imaginary "one of ordinary skill in the art", without pointing specifically to any teaching in any of the art of record. Applicants respectfully traverse.

The present invention relates to an adjustable bed used for nursing care or Apnea Syndrome treatment, for example. The adjustable bed of the present invention includes a judgment unit for determining which sleep stage the user of the bed is in.

The invention as set forth in claim 1 requires "a control unit adapted to control the tilt unit in response to a sleep stage judgment made by the judgment unit." Claim 1 also requires "a bed adapted to move a body of a person lying on the bed into a bent position by elevating the upper body and bending the knees." This is different from the movement created by the "tilt unit adapted to tilt the bed laterally while the bed is in a bent position." Thus, the invention, as set forth in claim 1, provides an adjustable bed that is capable of tilting the bed laterally while it is in a bent position, i.e., the gatch position, based on the sleep stage of the user.

The adjustable bed of the present invention enables the user to easily turn on his or her side as a result of these automatic tilt operations while the bed is in the bent position, which is the most comfortable position for patients during sleep, resulting in the sleeping user to sleep stress free.

For example, with one side of the bed surface being raised to ensure the safety of the user, the bed surface is tilted to that side in the lateral direction, while keeping the user in the bent position so that the user can turn on his or her side while effectively being folded with the

mattress, as shown in Figure 2. The mechanism to accomplish this tilt operation is shown in Figures 14-19.

The ability of the adjustable bed of the present invention to tilt while in a bent or folded position while the user is in a relatively stable sleep posture, provides a sophisticated and safe bed construction that prevents a user from developing bedsores to a much lesser extent than as compared with a conventional adjustable bed which simply provides for bending of the knees and elevating of the upper body, i.e., a simple gatch construction.

The office action points to *Zur, Wu* and *Bartlett* as disclosing a bed construction that possesses the ability to perform a tilting operation; that is, tilting of a longitudinal extent of the bed and the ability to elevate the upper body and bend the knees. *Zur, Wu* and *Bartlett* disclose these functions. However, neither *Zur, Wu* or *Bartlett* disclose a bed construction as recited in claim 1, that has "a tilt unit adapted to tilt the bed laterally while the bed is in a bent position." In other words, neither *Zur, Wu* or *Bartlett* tilts the bed in the lateral direction (i.e., the direction of the width of the bed) while elevating the upper body and bending the knees.

The complex bed drive mechanism disclosed in the present application, which accomplishes simultaneously performing a tilt operation (i.e., driving the bed in the lateral direction), and a gatch operation (driving the bed in the longitudinal direction), is clearly different from the conventional construction of driving the bed in only one of the longitudinal direction or the lateral direction.

The present invention performs tilting while creating a state of folding the user using one of the side sections of the bed frame, thereby safely turning the user without causing stress. The simultaneous performance of a gatch operation and tilt operation is simply not disclosed by any of the references of record. The tilting operations disclosed by *Zur, Wu* and *Bartlett* for example,

will not only cause the user to feel uneasy, but may actually be a safety hazard as a result of the tilting operation.

The office action refers to *Larson* as teaching the controlling of a parameter of a bed, “namely heat, as by utilizing a judgment unit to detect the body temperature of a person and relaying the judgment unit information to a control unit operable to control the temperature of the bed.” Applicants respectfully submit this is immaterial to the simultaneous bending and tilting of the bed that is applicants’ invention.

The examiner correctly recognizes that *Higgins* “does not specifically recite automatic posture positioning change during sleep.” The office action does not point to any specific reference for the motivation to provide an automatic posture positioning change during sleep. The office action points to *Zur* for a desire to tilt the bed to sustain comfort for the occupant. Applicants respectfully submit that *Zur* does not disclose or teach the tilting of the bed laterally while the bed is in a bent position in response to a sleep stage judgment made by a judgment unit.

Applicants respectfully submit that in spite of all the references of record cited by the office action, none of these references provide a motivation for a bed construction that is capable of tilting in the lateral direction (the direction of the width) at the same time as forming the bent position, and furthermore, performing the tilting operation in response to a sleep stage judgment made by a judgment unit which determines the sleep stage of a person laying on the bed.

Applicants respectfully submit that the office action is wrongfully using the hindsight gained from the knowledge of applicants’ invention to choose and combine the references as asserted in the final office action. The lack of motivation in these references to be combined in a

manner which meets the structural and functional elements of claim 1 is a clear indication that claim 1 is patentable over the art of record.

Claims 2-8 depend from claim 1 and, therefore, are seen as also patentable for the reasons given above for claim 1.

Applicants respectfully request that this rejection be withdrawn.

Applicants submit that all the claims are in condition for allowance and respectfully requests that the claims be allowed and this application passed to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service as EXPRESS MAIL, No. EV 632 762 875 US in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 29, 2005.

By: Marc Fregoso  
*Marc Fregoso*  
Signature

Dated: August 29, 2005

Respectfully submitted,

**SNELL & WILMER L.L.P.**

*Albin H. Gess*  
Albin H. Gess  
Registration No. 25,726  
600 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626  
Telephone: (714) 427-7020